

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 8

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO TAXATION; EXPANDING THE ALLOWANCE OF WITHHOLDING AMOUNTS FOR ESTIMATED TAX PURPOSES; PROVIDING A PAYMENT DATE FOR THE FIRST QUARTERLY PAYMENT OF ESTIMATED CORPORATE INCOME TAX; EXPANDING COVERAGE OF THE WITHHOLDING TAX ACT; PROVIDING A CREDIT AND REQUIRING ELECTRONIC FILING OF WITHHOLDING INFORMATION RETURNS BY CERTAIN EMPLOYERS AND PAYORS FOR VARIOUS AGENCIES; EXPANDING COVERAGE OF THE OIL AND GAS PROCEEDS WITHHOLDING TAX ACT AND IMPOSING WITHHOLDING RATES; IMPOSING A PENALTY; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-12.2 NMSA 1978 (being Laws 1996, Chapter 17, Section 1, as amended) is amended to read:

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underscored material = new
[bracketed material] = delete

1 "7-2-12.2. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED
2 TAX--PENALTY.--

3 A. Except as otherwise provided in this section,
4 [~~every~~] an individual who is required to file an income tax
5 return under the Income Tax Act shall pay the required annual
6 payment in installments through either withholding or estimated
7 tax payments.

8 B. For the purposes of this section:

9 (1) "required annual payment" means the lesser
10 of:

11 (a) ninety percent of the tax shown on
12 the return of the taxable year or, if no return is filed,
13 ninety percent of the tax for the taxable year; or

14 (b) one hundred percent of the tax shown
15 on the return for the preceding taxable year if the preceding
16 taxable year was a taxable year of twelve months and the
17 taxpayer filed a New Mexico tax return for that preceding
18 taxable year; and

19 (2) "tax" means the tax imposed under Section
20 7-2-3 NMSA 1978 less any amount allowed for applicable credits
21 and rebates provided by the Income Tax Act.

22 C. There shall be four required installments for
23 each taxable year. If a taxpayer is not liable for estimated
24 tax payments on March 31, but becomes liable for estimated tax
25 at some point after March 31, [~~he~~] the taxpayer must make

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1 estimated tax payments as follows:

2 (1) if the taxpayer becomes required to pay
3 estimated tax after March 31 and before June 1, fifty percent
4 of the required annual payment must be paid on or before June
5 15, twenty-five percent on September 15 and twenty-five percent
6 on or before January 15 of the following taxable year;

7 (2) if the taxpayer becomes required to pay
8 estimated tax after May 31, but before September 1, the
9 taxpayer must pay seventy-five percent of the required annual
10 payment on or before September 15 and twenty-five percent on or
11 before January 15 of the following taxable year; and

12 (3) if the taxpayer becomes required to pay
13 estimated tax after August 31, the taxpayer must pay one
14 hundred percent of the required annual payment on or before
15 January 15 of the following taxable year.

16 D. Except as otherwise provided in this section,
17 for taxpayers reporting on a calendar year basis, estimated
18 payments of the required annual payment are due on or before
19 April 15, June 15 and September 15 of the taxable year and
20 January 15 of the following taxable year. For taxpayers
21 reporting on a fiscal year other than a calendar year, the due
22 dates for the installments are the fifteenth day of the fourth,
23 sixth and ninth months of the fiscal year and the fifteenth day
24 of the first month following the fiscal year.

25 E. A rancher or farmer who expects to receive at
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underscoring material = new
[bracketed material] = delete

1 least two-thirds of [~~his~~] gross income for the taxable year
2 from ranching or farming, or who has received at least two-
3 thirds of [~~his~~] gross income for the previous taxable year from
4 ranching or farming, may:

5 (1) pay the required annual payment for the
6 taxable year in one installment on or before January 15 of the
7 following taxable year; or

8 (2) on or before March 1 of the following
9 taxable year, file a return for the taxable year and pay in
10 full the amount computed on the return as payable.

11 [~~No~~] A penalty under Subsection G of this section shall
12 not be imposed unless the rancher or farmer underpays [~~his~~] the
13 tax by more than one-third. If a joint return is filed, a
14 rancher or farmer must consider [~~his or her~~] a spouse's gross
15 income in determining whether at least two-thirds of gross
16 income is from ranching or farming.

17 F. For the purposes of this section, the amount of
18 tax deducted and withheld with respect to a taxpayer under the
19 Withholding Tax Act or the Oil and Gas Proceeds Withholding Tax
20 Act shall be deemed a payment of estimated tax. An equal part
21 of the amount of withheld tax shall be deemed paid on each due
22 date for the applicable taxable year unless the taxpayer
23 establishes the dates on which all amounts were actually
24 withheld. In that case, the amounts withheld shall be deemed
25 payments of estimated tax on the dates on which the amounts

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1 were actually withheld. The taxpayer may apply the provisions
2 of this subsection separately to wage withholding and any other
3 amounts withheld under the Withholding Tax Act or the Oil and
4 Gas Proceeds Withholding Tax Act.

5 G. Except as otherwise provided in this section, in
6 the case of an underpayment of the required annual payment by a
7 taxpayer, there shall be added to the tax a penalty determined
8 by applying the rate specified in Subsection B of Section
9 7-1-67 NMSA 1978 to the amount of the underpayment for the
10 period of the underpayment, provided:

11 (1) the amount of the underpayment shall be
12 the excess of the amount of the required annual payment over
13 the amount, if any, paid on or before the due date for the
14 installment;

15 (2) the period of the underpayment runs from
16 the due date for the installment to whichever of the following
17 dates is earlier:

18 (a) the fifteenth day of the fourth
19 month following the close of the taxable year; or

20 (b) with respect to any portion of the
21 underpayment, the date on which the portion was paid; and

22 (3) a payment of estimated tax shall be
23 credited against unpaid or underpaid installments in the order
24 in which the installments are required to be paid.

25 H. No penalty shall be imposed under Subsection G

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1 of this section for any taxable year if:

2 (1) the difference between the following is
3 less than five hundred dollars (\$500):

4 (a) the tax shown on the return for the
5 taxable year or, when no return is filed, the tax for the
6 taxable year; and

7 (b) any amount withheld under the
8 provisions of the Withholding Tax Act or the Oil and Gas
9 Proceeds Withholding Tax Act for that taxpayer for that taxable
10 year;

11 (2) the [~~individual's~~] taxpayer's preceding
12 taxable year was a taxable year of twelve months, the
13 [~~individual~~] taxpayer did not have a tax liability for the
14 preceding taxable year and the [~~individual~~] taxpayer was a
15 resident of New Mexico for the entire taxable year;

16 (3) through either withholding or estimated
17 tax payments, the [~~individual~~] taxpayer paid the required
18 annual payment as defined in Subsection B of this section; or

19 (4) the secretary determines that the
20 underpayment was not due to fraud, negligence or disregard of
21 rules and regulations.

22 I. If on or before January 31 of the following
23 taxable year the taxpayer files a return for the taxable year
24 and pays in full the amount computed on the return as payable,
25 then [~~no~~] a penalty under Subsection G of this section shall

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1 not be imposed on an underpayment of the fourth required
2 installment for the taxable year.

3 J. This section applies to taxable years of less
4 than twelve months and to taxpayers reporting on a fiscal year
5 other than a calendar year in the manner determined by
6 regulation or instruction of the secretary.

7 K. Except as otherwise provided in Subsection L of
8 this section, this section applies to any estate or trust.

9 L. This section does not apply to any trust that is
10 subject to the tax imposed by Section 511 of the Internal
11 Revenue Code or that is a private foundation. For a taxable
12 year that ends before the date two years after the date of the
13 decedent's death, this section does not apply to:

14 (1) the estate of the decedent; or

15 (2) any trust all of which was treated under
16 Subpart E of Part I of Subchapter J of Chapter 1 of the
17 Internal Revenue Code as owned by the decedent and to which the
18 residue of the decedent's estate will pass under the decedent's
19 will or, if no will is admitted to probate, that is the trust
20 primarily responsible for paying debts, taxes and expenses of
21 administration.

22 M. The provisions of this section do not apply to
23 first-year residents."

24 Section 2. Section 7-2A-9.1 NMSA 1978 (being Laws 1986,
25 Chapter 5, Section 1, as amended by Laws 2003, Chapter 86,

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1 Section 2 and by Laws 2003, Chapter 295, Section 1) is amended
2 to read:

3 "7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--
4 PENALTY--EXEMPTION.--

5 A. Every taxpayer shall pay estimated corporate
6 income tax to the state of New Mexico during its taxable year
7 if its tax after applicable credits is five thousand dollars
8 (\$5,000) or more in the current taxable year. A taxpayer to
9 which this section applies shall calculate estimated tax by one
10 of the following methods:

11 (1) estimating the amount of tax due, net of
12 any credits, for the current taxable year, provided that the
13 estimated amount is at least eighty percent of the amount
14 determined to be due for the taxable year;

15 (2) using as the estimate an amount equal to
16 one hundred percent of the tax due for the previous taxable
17 year, if the previous taxable year was a full twelve-month
18 year;

19 (3) using as the estimate an amount equal to
20 one hundred ten percent of the tax due for the taxable year
21 immediately preceding the previous taxable year, if the taxable
22 year immediately preceding the previous taxable year was a full
23 twelve-month year and the return for the previous taxable year
24 has not been filed and the extended due date for filing that
25 return has not occurred at the time the first installment is

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1 due for the taxable year; or

2 (4) estimating the amount of tax due, net of
3 any credits, for each fiscal quarter of the current taxable
4 year, provided that the estimated amount is at least eighty
5 percent of the amount determined to be due for that quarter.

6 B. If Subsection A of this section applies, the
7 amount of estimated tax shall be paid in installments as
8 provided in this subsection. Twenty-five percent of the
9 estimated tax calculated under Paragraph (1), (2) or (3) of
10 Subsection A of this section or one hundred percent of the
11 estimated tax calculated under Paragraph (4) of Subsection A of
12 this section is due on or before the following dates: the
13 fifteenth day of the fourth month of the taxable year, the
14 fifteenth day of the sixth month of the taxable year, the
15 fifteenth day of the ninth month of the taxable year and the
16 fifteenth day of the twelfth month of the taxable year.

17 Application of this subsection to a taxable year that is a
18 fractional part of a year shall be determined by regulation of
19 the secretary.

20 C. Every taxpayer to which Subsection A of this
21 section applies that fails to pay the estimated tax when due or
22 that makes estimated tax payments during the taxable year that
23 are less than the lesser of eighty percent of the income tax
24 imposed on the taxpayer under the Corporate Income and
25 Franchise Tax Act or the amount required by Paragraph (2), (3)

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1 or (4) of Subsection A of this section shall be subject to the
2 interest and penalty provisions of Sections 7-1-67 and 7-1-69
3 NMSA 1978 on the underpayment.

4 D. For purposes of this section, the amount of
5 underpayment shall be the excess of the amount of the
6 installment that would be required to be paid if the estimated
7 tax were equal to eighty percent of the tax shown on the return
8 for the taxable year or the amount required by Paragraph (2),
9 (3) or (4) of Subsection A of this section or, if no return was
10 filed, eighty percent of the tax for the taxable year for which
11 the estimated tax is due less the amount, if any, of the
12 installment paid on or before the last date prescribed for
13 payment.

14 E. For purposes of this section, the period of
15 underpayment shall run from the date the installment was
16 required to be paid to whichever of the following dates is
17 earlier:

18 (1) the fifteenth day of the third month
19 following the end of the taxable year; or

20 (2) with respect to any portion of the
21 underpayment, the date on which such portion is paid. For the
22 purposes of this paragraph, a payment of estimated tax on any
23 installment date shall be applied as a payment of any previous
24 underpayment only to the extent such payment exceeds the amount
25 of the installment determined under Subsection D of this

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1 section due on such installment date.

2 F. For the purposes of this section, the amount of
 3 tax deducted and withheld with respect to a taxpayer [~~by a~~
 4 ~~remitter~~] under the Withholding Tax Act or the Oil and Gas
 5 Proceeds Withholding Tax Act shall be deemed a payment of
 6 estimated tax. An equal amount of the amount of withheld tax
 7 shall be deemed paid on each due date for the applicable
 8 taxable year unless the taxpayer establishes the dates on which
 9 all amounts were actually withheld, in which case the amounts
 10 withheld shall be deemed payments of estimated tax on the dates
 11 on which the amounts were actually withheld. The taxpayer may
 12 apply the provisions of this subsection separately to amounts
 13 withheld under the Withholding Tax Act or the Oil and Gas
 14 Proceeds Withholding Tax Act."

15 Section 3. Section 7-3-2 NMSA 1978 (being Laws 1990,
 16 Chapter 64, Section 1, as amended) is amended to read:

17 "7-3-2. DEFINITIONS.--As used in the Withholding Tax Act:

18 A. "department" means the taxation and revenue
 19 department, the secretary of taxation and revenue or any
 20 employee of the department exercising authority lawfully
 21 delegated to that employee by the secretary;

22 B. "employee" means either an individual domiciled
 23 within the state who performs services either within or without
 24 the state for an employer or, to the extent permitted by law,
 25 an individual domiciled outside of the state who performs

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1 services within the state for an employer;

2 C. "employer" means a person, or an officer, agent
3 or employee of that person, having control of the payment of
4 wages, doing business in or deriving income from sources within
5 the state for whom an individual performs or performed any
6 service as the employee of that person, except that if the
7 person for whom the individual performs or performed the
8 services does not have control over the payment of the wages
9 for such services, "employer" means the person having control
10 of the payment of wages;

11 D. "film performing artist entity" means a personal
12 service corporation or other business association that receives
13 payments for the services of a performing artist for the
14 purposes of the film production tax credit;

15 [~~D.~~] E. "Internal Revenue Code" means the Internal
16 Revenue Code of 1986, as amended;

17 [~~E.~~] F. "owner" means a partner in a partnership
18 not taxed as a corporation for federal income tax purposes for
19 the taxable year, a shareholder of an S corporation or of a
20 corporation other than an S corporation that is not taxed as a
21 corporation for federal income tax purposes for the taxable
22 year, a member of a limited liability company or any similar
23 person holding an ownership interest in any pass-through
24 entity;

25 [~~F.~~] G. "pass-through entity" means:

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1 (1) a film performing artist entity; or

2 (2) any other business association other than:

3 [~~1~~] (a) a sole proprietorship;

4 [~~2~~] (b) an estate or trust that does
5 not distribute income to beneficiaries;

6 [~~3~~] (c) a corporation, limited
7 liability company, partnership or other entity not a sole
8 proprietorship taxed as a corporation for federal income tax
9 purposes for the taxable year; or

10 [~~4~~] (d) a partnership that is
11 organized as an investment partnership in which the partners'
12 income is derived solely from interest, dividends and sales of
13 securities;

14 H. "payee" means an individual to whom a payor is
15 making a pension or annuity payment;

16 [~~G.~~] I. "payor" means [any] a person making payment
17 of a pension or annuity to an individual domiciled in New
18 Mexico;

19 [~~H.~~] J. "payroll period" means a period for which a
20 payment of wages is made to [the] an employee by [his] the
21 employee's employer;

22 [~~I.~~] K. "person" means any individual, club,
23 company, cooperative association, corporation, estate, firm,
24 joint venture, partnership, receiver, syndicate, trust or other
25 association, limited liability company, limited liability

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1 partnership or gas, water or electric utility owned or operated
2 by a county or municipality and, to the extent permitted by
3 law, any federal, state or other governmental unit or
4 subdivision or an agency, department or instrumentality
5 thereof;

6 L. "personal service corporation" means "personal
7 service corporation" as that term is defined in the Internal
8 Revenue Code;

9 ~~[J.]~~ M. "wagerer" means any person who receives
10 winnings that are subject to withholding;

11 ~~[K.]~~ N. "wages" means remuneration in cash or other
12 form for services performed by an employee for an employer;

13 ~~[L.]~~ O. "winnings that are subject to withholding"
14 means "winnings which are subject to withholding" as that term
15 is defined in Section 3402 of the Internal Revenue Code;

16 ~~[M.]~~ P. "withholdee" means:

17 (1) an individual domiciled in New Mexico
18 receiving a pension or annuity from which an amount of tax is
19 deducted and withheld pursuant to the Withholding Tax Act;

20 (2) an employee; and

21 (3) a wagerer; and

22 ~~[N.]~~ Q. "withholder" means a payor, an employer or
23 any person required to deduct and withhold from winnings that
24 are subject to withholding."

25 Section 4. Section 7-3-6 NMSA 1978 (being Laws 1969,

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1 Chapter 25, Section 1, as amended) is amended to read:

2 "7-3-6. DATE PAYMENT DUE.--Except for amounts withheld
3 pursuant to the provisions of Section 7-3-12 NMSA 1978, taxes
4 withheld under the provisions of the Withholding Tax Act must
5 be paid on or before the twenty-fifth day of the month
6 following the month when the taxes were required to be
7 withheld. Amounts withheld pursuant to Section 7-3-12 NMSA
8 1978 must be paid on or before the [~~due date of the return for~~
9 ~~the pass-through entity~~] twenty-fifth day of the month
10 following the end of the calendar quarter for which the taxes
11 were required to be withheld."

12 Section 5. Section 7-3-7 NMSA 1978 (being Laws 1961,
13 Chapter 243, Section 8, as amended) is amended to read:

14 "7-3-7. STATEMENTS OF WITHHOLDING.--

15 A. Except for employers required to file quarterly
16 withholding information returns pursuant to the Withholding Tax
17 Act or required to file a wage and contribution report to the
18 workforce solutions department pursuant to Section 51-1-12 NMSA
19 1978, every employer shall file an annual statement of
20 withholding for each employee. [~~This~~] The statement shall be
21 in a form prescribed by the department and shall be filed with
22 the department on or before the last day of February of the
23 year following that for which the statement is made. It shall
24 include the total compensation paid the employee and the total
25 amount of tax withheld for the calendar year or portion of a

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1 calendar year if the employee has worked less than a full
2 calendar year.

3 B. Except for payors who file the quarterly
4 withholding information returns pursuant to the Withholding Tax
5 Act, every payor shall file an annual statement of withholding
6 for each individual from whom some portion of a pension or an
7 annuity has been deducted and withheld by that payor. [~~This~~]
8 The statement shall be in a form prescribed by the department
9 and shall be filed with the department on or before the last
10 day of February of the year following that for which the
11 statement is made. It shall include the total amount of
12 pension or annuity paid to the individual and the amount of tax
13 withheld for the calendar year.

14 C. Every person required to deduct and withhold tax
15 from a payment of winnings that are subject to withholding
16 shall file an annual statement of withholding for each wagerer
17 from whom some portion of a payment of winnings has been
18 deducted and withheld by that person. [~~This~~] The statement
19 shall be in a form prescribed by the department and shall be
20 filed with the department on or before the last day of February
21 of the year following that for which the statement is made. It
22 shall include the total amount of winnings paid to the
23 individual and the amount of tax withheld for the calendar
24 year. The department may also require any person who is
25 required to submit an information return to the internal

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1 revenue service regarding the winnings of another person to
2 submit copies of the return to the department."

3 Section 6. Section 7-3-12 NMSA 1978 (being Laws 1999,
4 Chapter 14, Section 3, as amended) is amended to read:

5 "7-3-12. INFORMATION RETURN REQUIRED FROM PASS-THROUGH
6 ENTITY--WITHHOLDING.--

7 A. A pass-through entity doing business in this
8 state shall file an annual information return with the
9 department on or before the due date of the entity's federal
10 return for the taxable year. The information return shall be
11 signed by the business manager or one of the owners of the
12 pass-through entity.

13 B. The information return required by this section
14 shall contain all information required by the department,
15 including:

- 16 (1) the pass-through entity's gross income;
17 (2) the pass-through entity's net income;
18 (3) the amount of each owner's share of the
19 pass-through entity's net income; and
20 (4) the name, address and tax identification
21 number of each owner entitled to a share of net income.

22 C. A pass-through entity shall provide to each of
23 its owners sufficient information to enable the owner to comply
24 with the provisions of the Income Tax Act and the Corporate
25 Income and Franchise Tax Act with respect to the owner's share

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1 of net income.

2 ~~[D. The pass-through entity shall deduct and~~
3 ~~withhold from each nonresident owner's share of net income an~~
4 ~~amount equal to the owner's share of net income multiplied by a~~
5 ~~rate set by department regulation. In the case of an owner~~
6 ~~that is an individual or entity not taxed as a corporation for~~
7 ~~federal income tax purposes for the taxable year, the rate~~
8 ~~shall not exceed the rate for composite returns. In the case~~
9 ~~of an owner that is a corporation or other entity taxed as a~~
10 ~~corporation for the taxable year, the rate shall not exceed the~~
11 ~~maximum rate for corporate income tax.~~

12 E.] D. For each calendar quarter beginning on or
13 after January 1, 2010, a pass-through entity that is not a film
14 performing artist entity shall deduct and withhold from each
15 owner's share of net income for that quarter an amount equal to
16 the owner's share of that net income multiplied by a rate set
17 by a department directive that does not exceed:

18 (1) the highest rate for single individuals
19 provided in Section 7-2-7 NMSA 1978 in the case of an owner
20 that is an individual or entity not taxed as a corporation for
21 federal income tax purposes for the taxable year; or

22 (2) the highest rate provided in Section
23 7-2A-5 NMSA 1978 in the case of an owner that is a corporation
24 or other entity taxed as a corporation for the taxable year.

25 E. For each calendar quarter beginning on or after

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1 July 1, 2009, a pass-through entity that is a film performing
2 artist entity that is a personal service corporation shall
3 deduct and withhold in each quarter an amount equal to its
4 owner-employee's share of deemed net income for that quarter
5 multiplied by a rate set by a department directive that does
6 not exceed the highest rate for single individuals provided in
7 Section 7-2-7 NMSA 1978. For a quarter, all of the net income
8 for that quarter of a film performing artist entity that is a
9 personal service corporation is deemed to be the owner-
10 employee's share for that quarter.

11 F. For each calendar quarter beginning on or after
12 July 1, 2009, a pass-through entity that is a film performing
13 artist entity other than a personal service corporation shall
14 deduct and withhold in each quarter an amount equal to its net
15 income for the quarter multiplied by a rate set by a department
16 directive that does not exceed the highest rate for single
17 individuals provided in Section 7-2-7 NMSA 1978.

18 G. Prior to January 1, 2010, the provisions of
19 Subsections D, E and F of this section shall not apply with
20 regard to:

21 (1) the share of net income of a
22 nonresidential owner that has executed an agreement in
23 accordance with rules or instructions of the department that
24 the owner will report and pay tax, if required, on its own
25 return pursuant to the Income Tax Act or the Corporate Income

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1 and Franchise Tax Act;

2 (2) oil and gas proceeds subject to the Oil
3 and Gas Proceeds Withholding Tax Act; or

4 (3) a publicly traded partnership as defined
5 in Subsection (b) of Section 7704 of the Internal Revenue Code,
6 as may be amended or renumbered, that is not treated as a
7 corporation pursuant to that section.

8 H. Beginning on January 1, 2010, the provisions of
9 [Subsection D] Subsections D, E and F of this section shall not
10 apply with regard to:

11 [~~(1)~~ the share of net income of a nonresident
12 owner that has executed an agreement in accordance with
13 regulations or instructions of the department that the owner
14 will report and pay tax, if required, on its own return
15 pursuant to the Income Tax Act or the Corporate Income and
16 Franchise Tax Act;

17 ~~(2)~~ (1) oil and gas proceeds subject to the
18 Oil and Gas Proceeds Withholding Tax Act; or

19 ~~(3)~~ (2) a publicly traded partnership as
20 defined in Subsection (b) of Section 7704 of the Internal
21 Revenue Code, as may be amended or renumbered, and that is not
22 treated as a corporation pursuant to that section.

23 [F.] I. Amounts deducted from the owner's share of
24 net income under the provisions of this section shall be a
25 collected tax. [No] An owner shall not have a right of action

1 against the pass-through entity for any amount deducted and
2 withheld from the owner's share of net income.

3 J. When a pass-through entity has withheld and
4 deducted an amount pursuant to the Withholding Tax Act from the
5 net income of an owner that is also a pass-through entity, the
6 payee pass-through entity may take credit for the amount
7 withheld in determining any withholding obligation that the
8 payee pass-through entity may have pursuant to the Withholding
9 Tax Act."

10 Section 7. A new section of the Withholding Tax Act is
11 enacted to read:

12 "[NEW MATERIAL] WITHHOLDING INFORMATION RETURN REQUIRED--
13 PENALTY.--

14 A. An employer that has more than fifty employees
15 and is not required to file an unemployment insurance tax form
16 with the workforce solutions department or a payor shall file
17 quarterly a withholding information return with the department
18 on or before the last day of the month following the close of
19 the calendar quarter.

20 B. The quarterly withholding information return
21 required by this section shall contain all information required
22 by the department, including:

- 23 (1) each employee's or payee's social security
24 number;
25 (2) each employee's or payee's name;

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1 (3) each employee's or payee's gross wages,
2 pensions or annuity payments;

3 (4) each employee's or payee's state income
4 tax withheld; and

5 (5) the workers' compensation fees due on
6 behalf of each employee or payee.

7 C. Each quarterly withholding information return
8 shall be filed with the department using a department-approved
9 electronic medium.

10 D. Any employer or payor required to file the
11 quarterly withholding information return who fails to do so by
12 the due date or to file the return in accordance with
13 Subsection C of this section is subject to a penalty in the
14 amount of fifty dollars (\$50.00)."

15 Section 8. Section 7-3A-2 NMSA 1978 (being Laws 2003,
16 Chapter 86, Section 5) is amended to read:

17 "7-3A-2. DEFINITIONS.--As used in the Oil and Gas
18 Proceeds Withholding Tax Act:

19 A. "department" means the taxation and revenue
20 department, the secretary of taxation and revenue or any
21 employee of the department exercising authority lawfully
22 delegated to that employee by the secretary;

23 B. "oil and gas" means crude oil, natural gas,
24 liquid hydrocarbons or any combination thereof, or carbon
25 dioxide;

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1 C. "oil and gas proceeds" means any amount derived
2 from oil and gas production from any well located in New Mexico
3 and payable as royalty interest, overriding royalty interest,
4 production payment interest, working interest or any other
5 obligation expressed as a right to a specified interest in the
6 cash proceeds received from the sale of oil and gas production
7 or in the cash value of that production, subject to all taxes
8 withheld therefrom pursuant to law; "oil and gas proceeds"
9 excludes "net profits interest" and other types of interest the
10 extent of which cannot be determined with reference to a
11 specified share of the oil and gas production;

12 D. "person" means an individual, club, company,
13 cooperative association, corporation, estate, firm, joint
14 venture, partnership, receiver, syndicate, trust or other
15 association, limited liability company, limited liability
16 partnership or gas, water or electric utility owned or operated
17 by a county or municipality and, to the extent permitted by
18 law, a federal, state or other governmental unit or subdivision
19 or an agency, a department or an instrumentality thereof;

20 E. "remittee" means a person that is entitled to
21 payment of oil and gas proceeds by a remitter; and

22 F. "remitter" means a person that pays oil and gas
23 proceeds to any remittee."

24 Section 9. Section 7-3A-3 NMSA 1978 (being Laws 2003,
25 Chapter 86, Section 6) is amended to read:

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1 "7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS.--

2 A. Except as otherwise provided in this section, a
3 remitter shall deduct and withhold from each payment of oil and
4 gas proceeds being made to a remittee an amount equal to the
5 rate specified in Subsection C of this section multiplied by
6 the gross amount that otherwise would have been payable to the
7 remittee. If a remitter receives oil and gas proceeds from
8 which an amount has been deducted and withheld pursuant to the
9 Oil and Gas Proceeds Withholding Tax Act, the remitter may take
10 credit for that amount in determining the amount the remitter
11 must withhold and deduct pursuant to this section in making
12 payments to a remittee.

13 B. The obligation to deduct and withhold from
14 payments as provided in Subsection A of this section does not
15 apply to payments that are made to:

16 [~~(1)~~] ~~remittees with a New Mexico address as~~
17 ~~shown on internal revenue service form 1099-MISC or successor~~
18 ~~form;~~

19 ~~(2)]~~ (1) the United States, this state or any
20 agency, instrumentality or political subdivision of either;

21 [~~(3)]~~ (2) any federally recognized Indian
22 nation, tribe or pueblo or any agency, instrumentality or
23 political subdivision thereof; or

24 [~~(4)]~~ (3) organizations that have been granted
25 exemption from the federal income tax by the United States

.175800.2GR

1 commissioner of internal revenue as organizations described in
 2 Section 501(c)(3) of the United States Internal Revenue Code of
 3 1986, as amended.

4 C. The rate of withholding is [~~six and~~
 5 ~~three-fourths percent for the period October 1, 2003 through~~
 6 ~~December 31, 2004. Thereafter the rate shall be set by~~
 7 ~~department regulation; provided that the rate may not exceed~~
 8 ~~the higher of the maximum bracket rate set by Section 7-2-7~~
 9 ~~NMSA 1978 for the taxable year or the maximum bracket rate set~~
 10 ~~by Section 7-2A-5 NMSA 1978 for the taxable year; and provided~~
 11 ~~further that remitters shall be given ninety days' notice of a~~
 12 ~~change in the rate] a rate set by a department directive that
 13 does not exceed:~~

14 (1) in the case of an owner that is an
 15 individual or entity not taxed as a corporation for federal
 16 income tax purposes for the taxable year, the highest rate for
 17 single individuals provided in Section 7-2-7 NMSA 1978; or

18 (2) in the case of an owner that is a
 19 corporation or other entity taxed as a corporation for the
 20 taxable year, the highest rate provided in Section 7-2A-5 NMSA
 21 1978.

22 D. If the amount to be withheld from a payment to a
 23 remittee is less than ten dollars (\$10.00), no withholding is
 24 required."

25 Section 10. APPLICABILITY.--The provisions of Section 1
 .175800.2GR

1 of this act are applicable to taxable years beginning on or
2 after January 1, 2010. The provisions of Section 2 of this act
3 are applicable to taxable years beginning on or after January
4 1, 2009.

5 Section 11. EFFECTIVE DATE.--The effective date of the
6 provisions of:

7 A. Sections 1, 5, and 7 through 9 of this act is
8 January 1, 2010; and

9 B. Sections 3, 4 and 6 of this act is July 1, 2009.

10 Section 12. EMERGENCY.--It is necessary for the public
11 peace, health and safety that this act take effect immediately.